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250–290 Spring Street  
East Melbourne VIC 3002 Australia  
Telephone +61 3 9249 1200  
[www.surgeons.org](http://www.surgeons.org)  
ABN 29 004 167 766

Ms Richelle McCausland  
National Health Practitioner Ombudsman  
Office of the National Health Practitioner Ombudsman  
GPO Box 2630  
MELBOURNE VIC 3001  
Email: [enquiries@nhpo.gov.au](mailto:enquiries@nhpo.gov.au)

**RE: Submission to the National Health Practitioner Ombudsman**  
***Investigation into Delay and Procedural Safeguards for Practitioners Subject to Immediate Action***

Dear Ms McCausland,

The Royal Australasian College of Surgeons (RACS) welcomes the opportunity to provide this submission in response to the National Health Practitioner Ombudsman's (NHPO) investigation into the delays and procedural safeguards for health practitioners subject to immediate action under the National Registration and Accreditation Scheme.

#### Introduction

While RACS acknowledges the need for public safety as paramount in any regulatory process, we remain deeply concerned by the increasing volume of complaints made by health practitioners, including surgeons, about the slow and delayed administration of immediate action powers by Ahpra and the National Boards. An effective regulatory system must balance the need to preserve public safety and procedural fairness, expediency, as well as the practitioners' wellbeing, mental health and professional reputation. RACS contends that the current deployment and use of immediate action powers often fail to achieve that balance, and with dire consequences for the surgical profession and broader medical workforce in their delivery of quality healthcare to their patients.

RACS would like to emphasize that all notifications and complaints need to be examined by a senior surgeon from the same specialty and, if possible, the same subspecialty. It is essential to have access to a panel of such professionals so that early and informed action can be taken. Furthermore, there should be a mechanism for a speedy response so that frivolous or unsubstantiated complaints can be assessed and dismissed within a statutory timeframe, e.g., within 30 days. This would help to minimize unnecessary delays and ensure that time and resources are not spent on baseless claims.

#### Background

The Royal Australasian College of Surgeons (RACS) is the leading advocate for surgical standards, professionalism, and education in Australia and Aotearoa New Zealand. It represents close to 8,000 surgeons and 1,300 surgical trainees and Specialist International Medical Graduates (SIMGs). As a not-for-profit organization, other functions include funding surgical research, advocating for members and patients, as well as provide surgical education in the Indo-Pacific. The College trains surgeons in nine main specialties: Cardiothoracic, General, Neurosurgery, Orthopaedic, Otolaryngology Head and Neck, Paediatric, Plastic and Reconstructive, Urology, and Vascular surgery.

The Ombudsman's investigation, which commenced in June 2024, addresses rising complaint levels, 84 in 2023–24 compared to 24 in 2020–21, regarding instantaneous regulatory action procedures.<sup>1</sup> Practitioners complain of draconian measures premised on immediate action procedures, i.e., suspension or the imposition of limiting conditions, particularly where investigations or determinations are not done in a timely manner. Surgeons subjected to such actions without a proper procedure for due process may incur irreparable harm to reputation, financial cost, and negative mental health effects. Clear process and guidelines around suspension of healthcare workers is

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<sup>1</sup> [Investigation into delay and procedural safeguards for practitioners who are subject to immediate action | National Health Practitioner Ombudsman and Privacy Commissioner](#)

critical. When this is lacking, the results can be great personal distress, helplessness, as well as damage to the individual's reputation.<sup>2</sup>

These issues have resonated across the medical profession. The Royal Australian College of General Practitioners recently reported a 66% increase in complaints made against Ahpra, inclusive of complaints against vexatious notifications.<sup>3</sup> The same sentiments have been made by the Australian Medical Association (AMA)<sup>4</sup> and the Australian Medical Professionals' Society (AMPS), which focused on the cost in terms of human toll. Many stakeholders claim incidents of suicides (16 as highlighted by the RACGP in a 2023)<sup>5</sup> and premature retirement due to protracted investigations.<sup>6</sup> These collective experiences demonstrate the urgent need for a review of immediate action protocols to ensure they are proportionate, procedurally sound, and timely.

## RACS Perspective

RACS represents a significant body of surgical professionals working across Australia and New Zealand. It has consistently advocated for procedural fairness in medical regulation. In our 2017 to the Queensland parliamentary inquiry, RACS called for a joint and coordinated approach by the Queensland Health Ombudsman and Ahpra to reduce duplication and deliver timely, fair outcomes for practitioners.<sup>7</sup> In 2021, RACS was concerned in its submission on proposed National Law amendments about the psychological toll of protracted investigations and advocated for reforms to the Health Practitioner Regulation National Law to preserve principles of natural justice.<sup>8</sup>

RACS reiterate that the misuse or overly broad application of immediate action powers, especially when not swiftly followed by investigation and resolution, has profound consequences for surgeons' professional identity, patient continuity, and overall well-being.<sup>9</sup> The current inquiry underscores those same issues: that practitioners, especially surgeons, are vulnerable to indefinite uncertainty once immediate action is taken, often without clarity on what will happen next or when.

## Key Issues Identified

### Delays Post Immediate Action

While regulatory authorities may act swiftly in initiating immediate action, the lack of equivalent urgency in investigating the underlying allegations is unjustifiable. Such delays often span many months, sometimes years, with little or no update provided to the practitioner. This lack of transparency is unprofessional and destabilizing. A report published in the International Journal for Quality in Health Care in 2023 highlighted health practitioners' distress and frustration with AHPRA's infrequent communications and the length of time taken to close the complaint. Practitioners participating in this study cited ongoing emotional and practical repercussions while the complaint was open.<sup>10</sup>

### Deficiency in Procedural Safeguards

Procedural protections under existing provisions are not adequate both at the point of taking prompt action and afterwards. These encompass limited access to internal review or appeal mechanisms, undue focus on untested charges, and absence of timeline or goals for resolution. These are not in keeping with natural justice or procedural fairness to be associated with a modern regulatory system. As described by the RACS position paper, the principles of natural justice allow for a fair hearing and a decision-making system built on strong procedures which are free from bias.<sup>11</sup>

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<sup>2</sup> Empey D. Suspension of doctors. The process is badly handled at present, and new guidance is welcome. BMJ. 2004;328:181-2.

Virtual Mentor. 2004;6(3):129-131. doi: 10.1001/virtualmentor.2004.6.3.hlaw1-0403.

<sup>3</sup> [RACGP - Complaints against AHPRA on the rise](#)

<sup>4</sup> [AMA seeking views on the complaints process to inform Ombudsman submission | Australian Medical Association](#)

<sup>5</sup> ['Deeply confronting' findings show acute distress of AHPRA notifications](#)

<sup>6</sup> <https://amps.redunion.com.au/news/amps-lodges-protests-about-ahpra>

<sup>7</sup> [Inquiry into the performance of the Queensland Health Ombudsman's functions pursuant to section 179 of the Health Ombudsman Act 2013 | RACS](#)

<sup>8</sup> [Letterhead](#) National Registration and Accreditation Scheme for the Health Professions - Consultation on the draft Health Practitioner Regulation National Law Amendment Bill

<sup>9</sup> Nash, L, Daly, M, Ekert, EV, Kelly, P, Figley, C, Huggard, P & Rees, C 2013, '146The Medico-Legal Environment and How Medico-Legal Matters Impact the Doctor: Research Findings from an Australian Study', in First Do No Self Harm: Understanding and Promoting Physician Stress Resilience, Oxford University Press.

RACGP. RACGP calls for changes to AHPRA immediate action process. 2025 [cited 2025 8 April]; Available from: <https://www1.racgp.org.au/newsgp/professional/racgp-calls-for-changes-to-ahpra-immediate-action>

<sup>10</sup> Biggar, S, van der Gaag, A, Maher, P, Evans, J, Bondu, L, Kar Ray, M, Phillips, R, Tonkin, A, Schofield, C, Ayscough, K, Hardy, M, Anderson, S, Saar, E & Fletcher, M 2023, "Virtually daily grief—understanding distress in health practitioners involved in a regulatory complaints process: a qualitative study in Australia", International Journal for Quality in Health Care, vol. 35, no. 4.

<sup>11</sup> Royal Australasian College of Surgeons. Natural Justice – Information for Decision Makers. 2016 [cited 2025 8 April]; Available from: [https://www.surgeons.org/-/media/Project/RACS/surgeons-org/files/position-papers/2016-06-21\\_pos\\_eta-set-027\\_natural\\_justice\\_guidelines\\_for\\_decision\\_makers.pdf?rev=cda7932213d74694a7431189a3e0fc21&hash=A781D89BBF4416FFE06309405F488EE2](https://www.surgeons.org/-/media/Project/RACS/surgeons-org/files/position-papers/2016-06-21_pos_eta-set-027_natural_justice_guidelines_for_decision_makers.pdf?rev=cda7932213d74694a7431189a3e0fc21&hash=A781D89BBF4416FFE06309405F488EE2).

## Impact on Surgeons and the Surgical Workforce

Surgeons threatened with perpetual suspension or onerous limits, particularly within the private market, might become unemployable, hospital credentialing threatened, and private practice contracts revoked. This not only affects the individual surgeon, but also patient access to surgical care and public confidence in the profession. Studies show that doctors subject to complaints are deeply affected by the complaint itself and the associated investigation procedure. Not only does this have an immediate impact on the welfare of the doctors but also leads to legacy issues including doctors practicing more defensively, avoiding certain procedures and high-risk patients which subsequently leads to negative impacts on the healthcare system.<sup>12</sup>

## Disproportionate Response to Risk

The threshold for invoking immediate action under s156 of the *Health Practitioner Regulation National Law* is “serious risk to persons.”<sup>13</sup> However, concerns from our membership suggests some notifications have led to immediate suspension on highly contestable grounds. Independent clinical or legal review can sometimes exacerbate this. For many years it has been recognised that knee-jerk reactions including immediate suspension is rarely perceived as a neutral act, particularly when this occurs without proper investigation and a lack of support. This leads to confusion, a decline in the doctor’s skill and confidence during any delay, and mistrust in leadership.<sup>14</sup>

## Supporting Legislative and Academic Evidence

An early Senate Inquiry (2017)<sup>15</sup> into Ahpra’s complaints process identified the scheme as overly complex and detrimental to practitioners navigating it. A recent academic literature calls for redesigning complaint-handling mechanisms in health regulation to center procedural fairness, offer time-bound investigations, and reduce distress caused by regulatory uncertainty. In this instance, this paper underscores the value of procedural fairness and expeditious resolution of bullying, discrimination, and harassment complaints, recommending independent investigations with transparent processes, definite timelines, and open findings to restore trust and ensure accountability within the healthcare system.<sup>16</sup>

## Recommendations

RACS strongly urges the NHPO to recommend the following reforms to Ahpra and the National Boards:

1. **Timed Investigation:** Set legislative time limits on cases decided in respect of which immediate action is taken, requiring specified reports after every 30 days.
2. **Peer to Peer Assessments:** All complaints should be reviewed by a senior surgeon from the same specialty or subspecialty, with access to a panel for timely, informed action.
3. **Interim Risk Assessment Panel:** Establish a standing independent panel comprising high-ranking clinicians and lawyers to review decisions in relation to immediate action after 14 working days’ have lapsed from imposition thereof.
4. **Improved Procedure Safeguards:** Settle explicit rights for internal and external examination along with access pathways to a swift appeal before an independent board or tribunal.
5. **Trauma-informed Regulation Practice:** Equip investigators with training in trauma-informed practices that reduce psychological harm to practitioners through the process.
6. **Public and Practitioner Transparency:** Publish anonymized information on immediate action cases, duration, and outcome to enable accountability and identify themes of concern.
7. **Unfounded Actions Compensation:** Consider a redress or compensation strategy where a practitioner is discharged after an unreasonable time gap following immediate action.

## Conclusion

The impact of procedural uncertainty on surgeons cannot be overstated. Suspension or the imposition of strict conditions can leave a surgeon unemployable, particularly in the private sector where hospital credentialing and professional indemnity arrangements may be withdrawn. For many, this results in immediate income loss and practice closure, regardless of the eventual findings of the investigation. It also affects patients, who may lose access to their preferred specialist, and raises broader concerns about the sustainability and morale of the surgical workforce.

<sup>12</sup> Bourne T, Wynants L, Peters M, Van Audenhove C, Timmerman D, Van Calster B, et al. The impact of complaints procedures on the welfare, health and clinical practice of 7926 doctors in the UK: a cross-sectional survey. *BMJ Open*. 2015 Jan 15;5(1):e006687.

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<sup>13</sup> [https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol\\_act/hprml428/s156.html](https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/act/consol_act/hprml428/s156.html)

<sup>14</sup> Empey D. Suspension of doctors. The process is badly handled at present, and new guidance is welcome. *BMJ*. 2004;328:181-2.

<sup>15</sup> [Australian Health Practitioner Regulation Agency - AHPRA and Medical Board note Senate report](#)

<sup>16</sup> [A new framework for Australian specialty colleges and other healthcare leaders to address bullying, discrimination, and harassment that involves doctors - ScienceDirect](#)

RACS is particularly concerned that the threshold for imposing immediate action, intended to be invoked only in the presence of a “serious risk to persons”, may be inconsistently applied. Concerns being that suspension may occur based on contested or untested claims, with no early review by an independent clinical or legal expert. If this practice is proven to be evident, then it undermines confidence in the integrity of the process and risks damaging the standing of the regulatory regime.

RACS's views are supported by parliament and academic research. In 2017, a Senate committee found the complaints system operated by Ahpra too complex and difficult to navigate. Furthermore, in recent years, there has been scholarly opinion urging a priority systemic redesign of complaint management on the basis of the benefit of time-limited, open, and trauma-informed processes.

The Ombudsman's investigation is timely and of the highest priority. While Ahpra's responsibility to protect the public can never be compromised, it is essential that this function be exercised with fairness, due process, transparency, and proportionality. Unsubstantiated or prolonged immediate action for the surgical profession has a chilling effect, deterring open practice, eroding morale, and threatening access to surgical care. RACS looks forward to continued engagement with the NHPO, Ahpra, and the broader regulatory community to effect meaningful reforms. RACS urges the Ombudsman to recommend reforms that promote balance, preserve practitioner dignity, and restore confidence in the regulatory framework.

Sincerely,

**ASSOCIATE PROFESSOR KERIN FIELDING**  
**RACS PRESIDENT**

**PROFESSOR MARK FRYDENBERG**  
**CHAIR, HEALTH POLICY AND ADVOCACY COMMITTEE**